

ORIGINAL

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7 Attorneys for Defendant
8 CHASE BANK U.S.A., N.A.

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 ALEJANDRA HERNANDEZ,

12 Plaintiff,

13 v.

14 CHASE BANK, USA, N.A.; and DOES 1 to 20,
15 inclusive

16 Defendants.
17
18
19
20

CASE NO.

09 CV 0629

JLS LSP

JUDGE:
CRTRM:

NOTICE OF REMOVAL OF ACTION

Action Filed: March 2, 2009

21 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

22 PLEASE TAKE NOTICE THAT defendant Chase Bank U.S.A., N.A. ("Chase" or
23 "Defendant") respectfully files this Notice of Removal, pursuant to 28 U.S.C. §§ 1441 et seq. to
24 remove the above-captioned matter from the Superior Court of the State of California for the County
25 of Imperial, in which the case is now pending, to the United States District Court for the Southern
26 District of California. In support thereof this Notice, Chase states as follows:

27 1. On or about March 2, 2009, plaintiff Alejandra Hernandez ("Plaintiff") filed a
28 complaint in the Superior Court of the State of California for the County of Imperial, case number
ECU05039 ("State Court").

FILED

09 MAR 26 PM 4:03

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY: [Signature]

DEPUTY

FAXED

2. To date, Chase has not been properly served with the Summons and Complaint. Thus, this Notice of Removal is timely pursuant to 28 USC § 1446 because it is filed within thirty days from the Chase' receipt of the Complaint. A copy of the Summons and Complaint is attached as Exhibit "1," as required by 28 USC. § 1446(a). Chase has not received service of process or any other process, pleadings or orders in this action.

3. This action is a civil action on which this Court has original jurisdiction under 28 USC § 1331, and is one which Chase may remove to this Court pursuant to 28 USC § 1441(b). The action arises from the laws of the United States, because in the Complaint, Plaintiff alleges violations of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 et seq. *See*, Complaint, pp. 3-4; 5-6.

4. Specifically, in the Complaint, Plaintiff alleges that Chase is liable for certain violations under TILA's disclosure requirements. *See*, Complaint, pp. 3-4; 5-6.

5. No consent is necessary as to defendants Does 1 through 20 because upon information and belief, those defendants have not been served. Thus, no consent to removal is necessary as to Doe defendants.

6. Payment of the appropriate fees and costs for removal and docketing of this matter in federal court, if any, are tendered with this Notice.

WHEREFORE, Chase respectfully requests that this action proceed in this Court as an action properly removed hereto.

DATED: March 25, 2009

ADORNO YOSS ALVARADO & SMITH
A Professional Corporation

By: 

JOHN M. SORICH
S. CHRISTOPHER YOO
VALERIE K. BRENNAN
Attorneys for Defendant
CHASE BANK U.S.A., N.A.

EXHIBIT 1

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SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

CHASE BANK, USA, N.A.; and DOES 1-20

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

ALEJANDRA HERNANDEZ

SUM-100

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ENDORSED
MAR 02 2009

SUPERIOR COURT
IMPERIAL COUNTY
JOSE O. GUILLEN, CLERK
BY MARIA MENESSES
REGISTRY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

Imperial County Superior Court

939 W Main Street

El Centro, CA 92243

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Mark D. Potter / Russell C. Handy

100 East San Marcos Blvd Suite 400

Potter Handy, LLP

San Marcos, CA 92069

(760)480-4162

DATE: MAR 02 2009

JOSE O. GUILLEN, Clerk by

MARIA MENESSES

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.80 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

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POTTER HANDY, LLP
 MARK D. POTTER, ESQ., SBN 166317
 RUSSELL C. HANDY, ESQ., SBN 195058
 100 East San Marcos Blvd., Suite 400
 San Marcos, CA 92069-2988
 (760) 480-4162; Fax (760) 480-4170
mark@potterhandy.com

Attorney for Plaintiff

ENDORSED
 MAR 02 2009

SUPERIOR COURT
 IMPERIAL COUNTY
 JOSE O. GUILLEN, CLERK
 BY MARIA MENDEZ
 DEPUTY

Assigned for all purpose to Judge
 including trial

Joseph Zimmerman

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF IMPERIAL

ALEJANDRA HERNANDEZ,

Plaintiff,

v.

CHASE BANK, USA, N.A.; and DOES 1-
 20;
 Defendants.

Case No.: ECU05039

**COMPLAINT FOR DAMAGES AND
 INJUNCTIVE RELIEF UNDER;**

- (1) TRUTH IN LENDING ACT;
- (2) FOREIGN LANGUAGE
 CONTRACT ACT;
- (3) UNFAIR COMPETITION LAW;
- (4) QUIET TITLE ACTION

DEMAND FOR JURY

Plaintiff ALEJANDRA HERNANDEZ complains of Defendants, CHASE BANK, USA, N.A.; and DOES 1-20 (hereinafter referred to as "Defendants") and allege:

I. PRELIMINARY STATEMENT

1. This is an action for permanent injunctive relief, and damages for predatory and discriminatory lending in the provision of financial mortgage lending assistance. The plaintiff seeks rescission and/or reformation of the loan transactions for which there is a security interest in her home and seeks her remedies as outlined below.

II. RELEVANT FACTS

2. The plaintiff, Alejandra Hernandez, is a predominantly Spanish speaker and generally does not read or write in English. At all relevant times alleged herein, Ms. Hernandez was over the age of 18 and a resident of San Diego County. In October of 2007, Ms. Hernandez, a caterer, purchased a home located at 301 E. 6th Street, Calexico, California. The purchase price was \$350,000 and it was intended to be a real step up for Ms. Hernandez who had been living in a much smaller home. Said real property, hereinafter "PROPERTY", is the subject of this suit and all claims made herein are based upon the purchase and ownership of said PROPERTY in the name of Ms. Hernandez.

3. Ms. Hernandez negotiated the loan with Defendant Chase Bank through a licensed California Real Estate Broker: Mortgage Made Easy. The terms were discussed and negotiated entirely in Spanish. No contract terms were provided to Ms. Hernandez in Spanish at any time.

4. Ms. Hernandez, who had an excellent credit score, was informed by Chase that because she already owned a home, this new purchase had to be as an "investment" property. The loan transaction was for 10.499% fixed rate over 30 years, although the going rate for owner-occupied properties was about 6.5%. This was untrue. Standard underwriting practices at the time dictated just the opposite, i.e., that when a property being purchased was superior to the property already owned and the borrower wished to move up, the loan could be made at an owner-occupied rate. Chase disregarded the borrower's stated intention and convinced the borrower to accept a loan that was greatly detrimental to the plaintiff but provided maximum return to Chase based in part, upon false and misleading statements.

5. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the PROPERTY, or their relative responsibilities in causing the violations of law herein complained of, and allege a joint venture and common enterprise by all such Defendants. Plaintiffs are informed and

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1 believe that each of the Defendants herein, including DOES 1 through 20, inclusive, is
2 responsible in some capacity for the events herein alleged, or is a necessary party for
3 obtaining appropriate relief. Plaintiffs will seek leave to amend when the true names,
4 capacities, connections, and responsibilities of the Defendants and DOES 1 through 20,
5 inclusive, are ascertained.

6 6. At all times relevant hereto, the Defendants, in the ordinary course of its
7 business, regularly extended or offered to extend consumer credit for which a finance
8 charge is or may be imposed or which, by written agreement, is payable in more than
9 four installments.

10 7. Defendants and their agents, officers, employees, and affiliated or
11 associated parties have engaged in and continue to engage in a pattern of unlawful,
12 fraudulent or unfair predatory real estate lending practices causing victims of their
13 actions, including Plaintiff herein, to lose their home through foreclosure.

14 8. The English copy of the Truth in Lending Act Disclosures understated the
15 annual percentage rate, the finance charge, the amount financed and the total of
16 payments and providing misleading information.

17 9. Chase Bank, acting through its agents, filed a Declaration of Compliance
18 pursuant to California Civil Code, Section 2923.5(c), as a necessary first step to
19 foreclosing on the PROPERTY declaring that Chase had contacted the borrower and
20 assessed the borrower's financial situation and explored options to avoid foreclosure
21 (as required by the Civil Code). This declaration is a falsehood.

22 I. FIRST CAUSE OF ACTION

23 TRUTH IN LENDING ACT

24 *(Against All Defendants)*

25 10. The allegations contained in all previous paragraphs are realleged and
26 incorporated herein by reference.

27 11. In October of 2007, Ms. Hernandez consummated a consumer credit
28 transaction (hereinafter "the transaction") with Defendants or their predecessors in

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1 interest in which Defendants extended consumer credit was subject to a finance charge
2 and which was initially payable to Defendants or their predecessors in interest.

3 12. As part of this consumer credit transaction, the Defendants retained a
4 security interest in the PROPERTY, which is Plaintiff's home.

5 13. The disclosures made pursuant to the Truth in Lending Act violated the
6 requirements of Truth in Lending and Regulation Z in the following and other respects:
7 it understated the annual percentage rate, the finance charge, the amount financed and
8 the total of payments.

9 14. The plaintiff raises these claims defensively under a recoupment theory in
10 the face of the Defendants foreclosure proceedings. Plaintiff seeks actual damages,
11 statutory damages, attorney's fees and costs.

12
13 **II. SECOND CAUSE OF ACTION**
14 **FOREIGN LANGUAGE CONTRACT ACT**

15 **[Cal. Civ. § 1632 et al.]**

16 *(Against All Defendants)*

17 15. The allegations contained in all previous paragraphs are realleged and
18 incorporated herein by reference.

19 16. The contract and loan obligations negotiated in this case were for use
20 primarily for personal, family or household purposes and subject to the provisions of
21 Article 7 (commencing with Section 10240) of Chapter 3 of Part 1 of Division 4 of the
22 Business and Professions Code, or Division 7 (commencing with Section 18000), or
23 Division 9 (commencing with Section 22000) of the Financial Code. As such, these
24 loans were subject to the requirements of the Foreign Language Contract Act found at
25 California Civil Code § 1632 et al.

26 17. Because the contract and loan obligation was negotiated in Spanish, the
27 plaintiff was entitled to a copy of the loan terms in Spanish. Defendants failed to
28 provide the plaintiff with a copy of the loan terms in Spanish.

1 18. Pursuant to subdivision (k) of the California Civil Code § 1632,
2 Defendants must allow the plaintiff to rescind the loan.

3 19. Pursuant to California Civil Code § 1691(b), this complaint serves as a
4 notice of rescission.

5
6 **III. THIRD CAUSE OF ACTION**

7 **UNFAIR COMPETITION LAW**

8 **[Cal. Bus. & Prof. § 17200 et al]**

9 *(Against All Defendants)*

10 20. The allegations contained in all previous paragraphs are realleged and
11 incorporated herein by reference.

12 ***Count 1: Violations of Truth in Lending Act***

13 21. 15 U.S.C. § 1601, et seq. is the Federal Truth in Lending Act ("TILA").
14 The Federal Reserve Board of Governors implements Truth in Lending Act through
15 Regulation Z (12 C.F.R. § 226) and its Official Staff Commentary. Compliance by
16 lenders with Regulation Z became mandatory on October 1, 1982. Likewise, Official
17 Staff Commentary issued by the Federal Reserve Board is generally binding on all
18 lenders.

19 22. The purpose of TILA is to protect consumers. This is stated in 12 C.F.R. §
20 226.1, which reads:

21 § 226.1. Authority, purpose, coverage, organization,
22 enforcement and liability . . .

23 (b) Purpose. The purpose of this regulation is to promote the
24 informed use of consumer credit by requiring disclosure about its
25 terms and costs. The regulation also gives consumers the right to
26 cancel certain credit transaction that involve a lien on a consumer's
27 principle dwelling.
28

1 23. Reg. Z also mandates very specific disclosure requirements regarding
2 home loans with which lenders, including Defendant Wachovia, must comply:

3 **§226.17. General disclosure requirements.**

4 (a) Form of disclosures. (1) The creditor shall make the disclosures
5 required by this subpart clearly and conspicuously in writing, in a
6 form that the consumer may keep. The disclosures shall be grouped
7 together, shall be segregated from everything else, and shall not
8 contain any information not directly related to the disclosures
9 required under § 226.18.

10 24. The purpose of the TILA is to assure a meaningful disclosure of credit
11 terms so that borrowers will be able to compare more readily the various credit terms
12 available to them and avoid the uninformed use of credit and to protect against
13 inaccurate and unfair credit billing practices.

14 25. Defendant Chase Bank's loan documents violate TILA because Defendant
15 failed to comply with the disclosure requirements mandated by Regulation Z and
16 Official Staff Commentary issued by the Federal Reserve Board. Defendants failed in a
17 number of ways to clearly, conspicuously, and/or accurately disclose the terms of the
18 ARM loan to Plaintiff as Defendants were required to do under TILA. These violations
19 are apparent on the face of the TILA Disclosure forms.

20 ***Count 2: Violation of the Foreign Language Contract Act***

21 26. By failing to provide the contract terms in Spanish to the plaintiff, the
22 Defendants took advantage of the language gap to mislead and deceive the plaintiff
23 about the true cost of her credit and about the terms under which she was financing her
24 home.

25
26 **V. FOURTH CAUSE OF ACTION**

27 **QUIET TITLE (Cal. Civ. P. § 760.010-764.080)**

28 27. The allegations contained in all previous paragraphs are realleged and

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1 incorporated herein by reference

2 28. The Plaintiff is the owner of the PROPERTY, is currently in possession of
3 the PROPERTY and is entitled to possession of the PROPERTY.

4 29. The Defendants claim an adverse interest in the PROPERTY owned by the
5 Plaintiff, but such claims are without right, the Defendants have no right, title, stake,
6 lien, or interest in the PROPERTY.

7 30. Plaintiff seeks a determination of her fee simple title in this action as of the
8 date that this complaint is filed.

9
10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays that this court award damages and provide relief as follows:

- 12 1. For rescission;
13 2. For actual damages;
14 3. For statutory damages;
15 4. For punitive damages where appropriate;
16 5. For restitutionary disgorgement of all monies received as a result of unfair
17 competition;
18 6. For interest as permitted by law;
19 7. A judgment quieting Plaintiff's fee simple title to the real property and that
20 Defendants have no right, title, or interest in or to the real property
21 8. For costs and a attorney's fee as provided under the statutes alleged above.
22 9. Award such other and further relief as the Court deems just and proper.

23
24 Dated: March 2, 2009

POTTER HANDY, LLP

25
26 By: 

27 MARK D. POTTER
28 Attorneys for Plaintiffs

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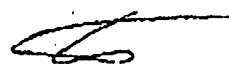
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: March 2, 2009

POTTER HANDY, LLP

By: 
MARK D. POTTER
Attorneys for Plaintiffs

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PAGE 01

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Mark D. Potter / Russell C. Handy 166317 / 195058 Potter Handy, LLP 100 East San Marcos Blvd., Suite 400 San Marcos, CA 92069 TELEPHONE NO.: (760) 480-4162 FAX NO.: (760) 480-4170		ENDORSED MAR 02 2009 SUPERIOR COURT IMPERIAL COUNTY JOSE O. GUILLEN, CLERK BY MARIA MENeses NSD1111	
ATTORNEY FOR (Name): Plaintiff, ALEJANDRA HERNANDEZ			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF _____ STREET ADDRESS: 939 W. Main Street MAILING ADDRESS: 939 W. Main Street CITY AND ZIP CODE: El Centro, CA 92243 BRANCH NAME: _____			
CASE NAME: ALEJANDRA HERNANDEZ v. CHASE BANK, USA N. A., ET AL.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: ECU05039 JUDGE: Joseph Zimmerman DEPT: _____

Items 1-5 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (48) Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) Non-PIP/DWD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (18) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) Employment <input type="checkbox"/> Wrongful termination (38) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (28) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
---	--	---

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Type of remedies sought (check all that apply):
 a. ☒ monetary b. ☒ nonmonetary, declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): **4**
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 2, 2009

Mark D. Potter

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 (Rev. January 1, 2007)**CIVIL CASE COVER SHEET**American LegalNet, Inc.
www.FormsWorkflow.comCal. Rules of Court, rules 3.220, 3.400-3.403;
Standards of Judicial Administration, § 19
www.courtinfo.ca.gov

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INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers

If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 5 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. You do not need to submit a cover sheet with amended papers. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Complex Cases

In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES**Auto Tort**

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other P/IPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other P/IPD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
- Other P/IPD/WD

Non-P/IPD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (18)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-P/IPD/WD Tort (35)

Employment

- Wrongful Termination (36)
- Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
- Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
- Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
- Collection Case—Seller Plaintiff
- Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment *(non-domestic relations)*
 - Sister State Judgment
 - Administrative Agency Award *(not unpaid taxes)*
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
- Declaratory Relief Only
- Injunctive Relief Only *(non-harassment)*
- Mechanics Lien
- Other Commercial Complaint Case *(non-tort/non-complex)*
- Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
 - Other Civil Petition

PROOF OF SERVICE**STATE OF CALIFORNIA, COUNTY OF ORANGE***Alejandra Hernandez v. Chase Bank, USA, N.A.*

Imperial County Superior Court Case No. ECU05039

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

On March 26, 2009, I served the foregoing document described as **NOTICE OF REMOVAL OF ACTION** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

BY THE ACT OF FILING OR SERVICE, THAT THE DOCUMENT WAS PRODUCED ON PAPER PURCHASED AS RECYCLED.

☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

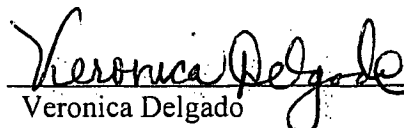
☐ **BY OVERNIGHT MAIL:** I deposited such documents at the Overnite Express or Federal Express Drop Box located at 1 MacArthur Place, Santa Ana, California 92707. The envelope was deposited with delivery fees thereon fully prepaid.

☐ **BY PERSONAL SERVICE:** I caused such envelope(s) to be delivered by hand to the above addressee(s).

☐ (State) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on March 26, 2009, at Santa Ana, California.


Veronica Delgado

SERVICE LIST

Alejandra Hernandez v. Chase Bank, USA, N.A.
Imperial County Superior Court Case No. ECU05039

Mark D. Potter, Esq. (760) 480-4162-telephone
Russell C. Handy, Esq. (760) 480-4170-facsimile
Potter Handy, LLP
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988

Attorney for Plaintiff, Alejandra Hernandez

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

PROOF OF SERVICE

1074919.1

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

ALEJANDRA HERNANDEZ,

DEFENDANTS

CHASE BANK, USA, N.A.; and DOES 1-20;

FILED
09 MAR 26 PM 4:03CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF SAN DIEGO
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Mark D. Potter, Esq./Russell C. Handy
Potter Handy, LLP

100 East San Marcos Blvd., Suite 400

San Marcos, CA 92069-2988

(760) 480-4162-telephone; (760) 480-4170-facsimile

ATTORNEYS (IF KNOWN)
S. Christopher Yoo, Esq.

Adorno, Yoss, Alvarado & Smith

1 MacArthur Place, Suite 200

Santa Ana, CA 92707

(714) 852-6800-telephone; (714) 852-6899-facsimile

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

15 U.S.C. SECTION 1601 (TILA)

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related	<input type="checkbox"/> 424 Property 21 USC 881	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 425 Copyrights	<input type="checkbox"/> 450 Commerce/ICC Rates/etc.
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 426 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 427 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 428 Social Security	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 429 Federal Tax Suits	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 430 HIA (13958)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 431 Black Lung (923)	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 432 DIWC/DIWW (405(g))	<input type="checkbox"/> 892 Economic Stabilization Act
	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 433 SSID Title XVI	<input type="checkbox"/> 893 Environmental Matters
	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 434 RSI (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
		<input type="checkbox"/> 791 Empl. Rel. Inc. Security Act	<input type="checkbox"/> 435 FEDERAL TAX SUITS	<input type="checkbox"/> 895 Freedom of Information Act
			<input type="checkbox"/> 436 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
			<input type="checkbox"/> 437 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
				<input checked="" type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 Original Proceeding
- ☒ 2 Removal from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT: ☐ CHECK IF THIS IS A CLASS ACTION DEMAND \$ UNDER F.R.C.P. 23CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

MARCH 26, 2009

161434 \$350-TB 03/26/09
::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

CR

FAXED

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-44**Authority For Civil Cover Sheet**

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs - Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS-44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause.

V. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section IV above, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

VI. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate's decision.

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS-44 is used to reference relating pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

(rev. 07/89)

::ODMA\PCDOCS\WORDPERFECT\22816\1 January 24, 2000 (3:10pm)

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE
Alejandra Hernandez v. Chase Bank, USA, N.A.
 Imperial County Superior Court Case No. ECU05039

I am employed in the County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is **ADORNO YOSS ALVARADO & SMITH, 1 MacArthur Place, Santa Ana, CA 92707.**

On March 26, 2009, I served the foregoing document described as **CIVIL COVER SHEET** on the interested parties in this action.

☒ by placing the original and/or a true copy thereof enclosed in (a) sealed envelope(s), addressed as follows:

SEE ATTACHED SERVICE LIST

☒ **BY REGULAR MAIL:** I deposited such envelope in the mail at 1 MacArthur Place, Santa Ana, California. The envelope was mailed with postage thereon fully prepaid.

I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

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☐ **BY FACSIMILE MACHINE:** I Tele-Faxed a copy of the original document to the above facsimile numbers.

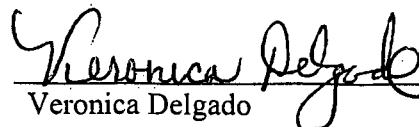
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☒ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made.

Executed on March 26, 2009, at Santa Ana, California.


 Veronica Delgado

PROOF OF SERVICE

SERVICE LIST

Alejandra Hernandez v. Chase Bank, USA, N.A.
Imperial County Superior Court Case No. ECU05039

Mark D. Potter, Esq.
Russell C. Handy, Esq.
Potter Handy, LLP
100 East San Marcos Blvd., Suite 400
San Marcos, CA 92069-2988

(760) 480-4162-telephone
(760) 480-4170-facsimile

Attorney for Plaintiff, Alejandra Hernandez

ADORNO YOSS ALVARADO & SMITH
ATTORNEYS AT LAW
SANTA ANA

PROOF OF SERVICE

1074919.1

**UNITED STATES
DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION

161434 - MB
* * C O P Y * *
March 26, 2009
16:09:23

Civ Fil Non-Pris

USAO #: 09CV0629
Judge.: JANIS L. SAMMARTINO
Amount.: \$350.00 CK
Check#: 77103

Total-> \$350.00

FROM: ALEJANDRA HERNANDEZ VS
CHASE BANK